Supreme Court, U.S.
FILED

No. 001650 FEB 26 2001

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In The

SUPREME COURT OF THE UNITED STATES

STEPHEN SIMON,
Petitioner

v.

QUAKER OATS EMPLOYEE BENEFIT PLAN
DENNIS CORY, individually and as Plan Administrator,
Respondent(s)

On Petition For a Writ of Certiorari to
To The United States Court of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED FOR REVIEW

I. Whether or not the Seventh Circuit Court erred in its holding wherein it states in relevant part that, "... Simon does **not** [emphasis added] contend that the Quaker Oats Plan authorizes the transfer to him of the claims of which he has sued...", and in light of the fact that the Plaintiff/Appellant has in fact contended that the Quaker Oats Plan authorizes the transfer of claims sued upon?

II. Whether or not the Seventh Circuit Court's lack of endorsing the District Court's conclusion that Simon lacks "standing" to sue under ERISA law creates a material conflict and split amongst the circuit(s) with respect to the Ninth Circuit's decision in *Simon v. Value Behavioral Health Inc.*, 955 F. Supp. 93 (N.D. Cal. 1997); *aff'd* 208 F.3d 1073 (9th Cir. 2000) holding that "Simon lacks standing to sue" under ERISA law in that matter?

III. Whether or not Petitioner has standing to sue under ERISA law or assert an ERISA cause of action in federal court based upon an assignment of benefits and/or assignment of cause of action to a [healthcare provider] from a "participant" of a Employee Retirement Income Security Act ("ERISA") health and welfare plan and who [provider] subsequently reassigns to a "creditor and/or subrogee" (Petitioner) and/or "subrogee" who has UCC holding(s) against the healthcare provider and who [creditor and/or subrogee] subsequently brings an ERISA cause of action individually and as assignee of assignor [healthcare provider] against an ERISA health and welfare plan for denial of ERISA benefits pursuant to 29 U.S.C. § 1132 alleging both either vested interest, colorable claim, derivative standing and/or beneficiary status is sufficient to proceed with such claim(s) for relief and with standing to sue in the United States District Court and/or standing to bring an ERISA cause of action?

IV. Whether or not Petitioner is in fact a "beneficiary" based upon the defined term "beneficiary" pursuant to 29 U.S.C. § 1002(8) wherein it refers to the term "designate" and since according to Black's Law Dictionary is synonymous with Black's Law defined term "appoint" that in turn is synonymous or interchangeable with Black's Law defined term "assign" and, as such, does an assignee with assignment of benefits and/or assignment of cause of action so designated by a "participant" of an ERISA health and welfare employee benefit plan to a healthcare provider who reassigns to a credit and/or subrogee (Petitioner), based upon the plain natural language reading of the Black's Law defined terms "beneficiary", "appoint", and "assign" constitute congressional intent that such similarly situated "assignees" are equivalent to "beneficiaries" and, as such, are enumerated parties pursuant to 29 U.S.C. § 1002(8) with standing to sue or bring an ERISA cause of action in the United States District Court?

V. Whether or not Petitioner is a "beneficiary" the defined term "beneficiary" pursuant to 29 U.S.C. § 1002(8) wherein it states, "...or by the terms of the employee benefit plan...or may become entitled to a benefit thereunder" and when any given ERISA health and welfare employee benefit plan does not prohibit or otherwise allow for assignability or to the extent assignment(s) are allowed or silent under the terms thereunder, then can such an assignee with a valid assignment(s) of either assignment of benefits and/or an assignment of cause of action proceed as a "beneficiary" based on the plain natural reading of the statute with standing to sue and is consistent with congressional intent?

VI. Whether a holding by a U.S. District Court or Appellate Court in dismissing or affirming a dismissal of a complaint for lacking a claim under ERISA as opposed to lack of standing to sue for denial of benefits of a ERISA health and welfare plan

when the Petitioner is the ultimate assignee of a "participant" of the health and welfare ERISA plan with valid assignments of accounts receivable and assignment of cause of action and who has plead a vested interest, colorable claim, derivative standing, and/or beneficiary status arising out of creditor status with UCC filings and/or purports to be a beneficiary by assignment, constitutes a violation of the United States Constitution including but not limited to Article III by depriving due process to the Courts for redress including preemption of state law or common law, unlawful taking of private property without allowing due process to proceed in Federal Courts and without redress for consideration of ERISA preemption of state law and/or common law causes of action and, as such, have severally or collectively amount to the unlawful taking of private property and/or withholding access to Federal Courts and, as such, denying due process thereunder?

VII. Whether or not the federal courts having sufficiently established a broad enough "judicial exception" under the federal common law by only allowing "healthcare providers" who actually provided the services as opposed to other healthcare provider(s) who obtained assignments from those actual healthcare providers notwithstanding the fact that the latter did not actually provide that professional service and to the extent that judicial exception under federal common law as it pertains to "healthcare providers" should be broadly interpreted allowing any qualified healthcare provider to bring an ERISA cause of action under the judicial exception doctrine established by federal common law?

VIII. Whether or not the United States District Court retains jurisdiction of an ERISA cause of action against a ERISA health and welfare employee benefit plan irregardless of whether the Plaintiff is deemed to be the "real party in interest" pursuant

to Fed.R.Civ.P. 17(a) and otherwise deprive all other privied parties of any equitable redress including the actual provider of professional services and/or real party in interest and thus subjecting those privied parties that may be related to the Petitioner to res judicata or collateral estoppel bar?

IX. Did the U.S. Seventh Circuit Court of Appeals panel overlooked or ignore conflicting case law within the federal common law that would have otherwise given good cause to reverse and/or remand to the lower court including but not limited to: T. J. Kennedy vs. Connecticut General Life Insurance Comapny, 924 F.2d 698 (7th Cir. 1991); Central States Pension Fund vs. Geber Truck Service Inc.; and Davidowitz vs. Delta Dental Plan Inc., 946 F.2d 1476 (9th Cir. 1991) and other Supreme Court holdings including but not limited to Fentron Industries et al vs. The National Shopmen Pension Fund et al, 674 F.2d 1300, 1982 U.S. App. LEXIS 19924 and Haynes vs. Kerner et al, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 653 (1972)?

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PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Seventh Circuit is reported at *Stephen Simon vs. Quaker Oats Employee Benefit Plan and Dennis Cory*, 234 F.3d 1274 (7th Cir. 2000).

The opinion of the United States District Court for the Northern District of Illinois is reported at *Stephen Simon vs. Quaker Oats Employee Benefit Plan and Dennis Cory*, Case No. 99 C 5589.

STATEMENT OF JURISDICTION

The date on which the United States Seventh Circuit Court of Appeals decided my case was on November 1st, 2000.

A timely petition for rehearing and rehearing en banc was denied by the United States Seventh Circuit Court of Appeals on the following date: November 27th, 2000, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

15 U.S.C. § 12 (RICO)
18 U.S.C. § 1961
18 U.S.C. § 1961(3)
18 U.S.C. § 1961(4)
18 U.S.C. § 1962
26 U.S.C. § 665

28 U.S.C. § 372(c)(1)
28 U.S.C. § 402(a)
28 U.S.C. § 1291
28 U.S.C. § 1331
28 U.S.C. § 1332
28 U.S.C. § 2107(b)
29 U.S.C. § 1001(b)
29 U.S.C. § 1002(1)
29 U.S.C. § 1002(2)(A)
29 U.S.C. § 1002(8)
29 U.S.C. § 1002(16)(A)
29 U.S.C. § 1056(d)
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Fed.R.App.P. 35(c)
RICO § 2(b)

STATEMENT OF THE CASE

This is a case in where the Seventh Circuit Court of Appeals affirmed the U.S. District Court's holding without endorsing that Court's conclusions that the Plaintiff lacked standing to sue under ERISA law and instead held that Plaintiff/Appellant lacks a claim under ERISA.

Whereas, the Seventh Circuit, without endorsing the lower court's conclusions which principally relied upon the U.S. Ninth Circuit holding in *Simon vs. Value Behavioral Health Inc.*, 208 F.3d. 1073 (9th Cir. 2000), has established a split amongst the circuits to wit: the Ninth and Seventh Circuit and, as such, is ripe for consideration before the Supreme Court of the United States. Additionally, the Seventh Circuit has failed or refused to acknowledge that the Plaintiff/Appellant has emphatically stated and plead that he is entitled to assert assignment based on the terms and conditions of that ERISA plan. Instead the Seventh Circuit totally ignores Plaintiff/Apopellant's assertions and concludes contrary to all of Plaintiff/Appellants' pleadings before the relevant and the lower court stating in relevant part that, "Simon does not contend that the Quaker Oats Plan authorizes the transfer to him of the claims of which he has sued..." On the other hand, Simon says otherwise and has asserted this claim both in the lower court and before the Seventh Circuit Court including but not limited to Plaintiff/Appellants' motion for rehearing and rehearing en banc but apparently has fallen upon deaf ears.

Whereas, Plaintiff/Appellant and now Petitioner contends that given the Seventh Circuit Court's holding and compared with the facts of Plaintiff/Appellants' pleadings, that the appellate order should not have been affirmed since that court's order is consistent

with what Plaintiff/Appellant plead and argued before that Court.

Petitioner asserts that the record will clearly show that the U.S.D.C.J. and the Seventh Circuit Panel unreasonably and unfairly ruled against the Plaintiff.

I believe that the Supreme Court Justices will determine that justice has not been served as they attempt to answer these and other questions. The Petitioner also trusts that the Supreme Court Justices will grant further *"authority"* so that Petitioner's ERISA standing to sue can be established as a matter of consistent with other related Court of Appeals case law.

The Petitioner also remains confident that given a fair and reasonable opportunity to replead all of the causes of action and to supplement same with evidence obtained through discovery that he can and will proceed on to the merits of the case. Furthermore, this is definitely a case that was prematurely and unjustly aborted at the pleading stage.

This is also a case where the District Court has not extended liberal construction to pro se pleadings or other similar applications. Therefore, I firmly believe that the Supreme Court will agree that justice, fairness, and reasonableness have not triumphed in this case.

Whereas, should the Supreme Court refuse to grant petition for writ of certiorari the Seventh Circuit Court of Appeals ruling on Petitioner's ERISA standing to sue and/or lacking an ERISA cause of action would significantly narrow the scope of those prior holdings of the federal common law consistent with expanded rulings on ERISA standing to sue and, as such, would establish an alarming and conflicting precedent. In addition, an adverse ruling at this juncture would encourage those Respondents to continue their unlawful activities that have significantly restrained and adversely impacted the entire mental health profession along with tens of thousands of patients who are participants and beneficiaries of ERISA plans while simultaneously enabling those co-conspiring Respondents to escape justice.

The Petitioner greatly appreciates the opportunity that our United States judicial system affords litigants to appeal unjust, unfair,

and adverse rulings and is now hopeful that this Supreme Court Justices of the United States Supreme Court will find favor in Petitioner's appeal and in the preservation of justice for one and for all.

The Petitioner looks forward to the appointed time and place to personally appear for the purpose of oral presentation before the Supreme Court Justices of the United States Supreme Court in God speed.

REASONS FOR GRANTING THE PETITION

Petitioner is aware of the chances of the United States Supreme Court granting a Petition for Writ of Certiorari that rarely occurs in cases of such imperative public importance and/or conflict amongst the circuits. In *Simon vs. Quaker*, the U.S. District Court's denial of Plaintiffs' standing to sue and the U.S. Seventh Circuit Court's refusal to affirm the lower court's decision with respect to ERISA standing to sue creates a schism amongst the Seventh Circuit and the Ninth Circuit holding in *Simon vs. Value* since the U.S. District Court in *Simon vs. Quaker* relied principally on *Simon vs. Value* holding of which has not endorsed that court's conclusion that Simon lacks standing. Therefore, this is a case where the Supreme Court of the United States would likely consider based upon the conflict amongst the circuits with respect to the holdings as stated.

CONCLUSION

The Petitioner has alleged in the Lawsuit that he, as an individual and the ultimate assignee of assignors and, as such, has standing to bring those causes of action including the ERISA claims.

In sum, the Supreme Court has been summoned to determine whether or not Petitioners' collective arguments of law and contentions of facts, as set forth herein, are sufficient to vacate,

reverse, and/or remand for further proceedings.

Secondly, the Petitioner has suffered significant personal financial losses and damages to his twenty (20) year career in the mental health field. Whereas, this Lawsuit constitutes the Petitioner's only available legal remedy for equitable and injunctive relief and, as such, Petitioner prays for justice and an opportunity to present his evidence before the United States Supreme Court as promised in the Constitution of the United States of America.

The Supreme Court Justices have been assigned the authority to oversee this judicial process and, as such, "stands in the shoes" of the proverbial watchman and as "shepherds" over the flocks.

The petition for a writ of certiorari should be granted.

Respectfully submitted,
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Appendix A

Dated: February 26, 2001

UNPUBLISHED OPINION
Not to be cited per Circuit Rule 53

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 27, 2000*
Decided November 1, 2000

Before

Hon. Richard A. Posner, Circuit Judge
Hon. Frank H. Easterbrook, Circuit Judge
Hon. Michael S. Kanne, Circuit Judge

Stephen Simon, Plaintiff-Appellant,	}	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 002342 v.	}	
Quaker Oats Employee Benefit Plan and Dennis Cory, Defendants-Appellees.	}	No. 99 C 5589 Harry D. Leinenweber, Judge.

*After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. The appeal is removed from the argument calendar and submitted for decision on the briefs and the record. See Fed. R. App. P. 34(a); Cir. R. 34(f).

Appendix A

Order

The claim on this appeal is materially identical to the claim plaintiff Stephen Simon presented in *Simon vs. Value Behavioral Health, Inc.* 208 F.3d 1073 (9th Cir. 2000). The district court dismissed Simon's complaint for the reasons given by the ninth circuit, and we affirm for those reasons–though without endorsing that court's conclusion that Simon lacks "standing," as opposed to its conclusion that he lacks a claim under ERISA. Only participants and beneficiaries in ERISA plans, and those who furnish covered services to those persons are entitled to collect from the plans. ERISA disallows the sale of welfare-benefit claims to strangers such as Simon except to the extent the plan authorizes their transfer. *Kennedy v. Connecticut General Life Insurance Co.*, 924 F.2d 698 (7th Cir. 1991). Simon does not contend that the Quaker Oats plan authorizes the transfer to him of the claims on which he has sued.

AFFIRMED

Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STEPHEN SIMON, Plaintiff, v. QUAKER OATS COMPANY EMPLOYEE BENEFIT PLAN and DENNIS CORY, individually and/or as Plan Administrator, Defendant(s).	Case No. 99 C 5589 Judge Harry D. Leinenweber

MEMORANDUM OPINION AND ORDER

Pro se plaintiff Stephen Simon brings this action against the defendants, Quaker Oats Employee Benefits Plan ("Quaker Plan") and Dennis Cory as plan administrator, alleging violations of the Employee Retirement Income Security Act ("ERISA") for denial of benefits and breach of fiduciary duties pursuant to 29 U.S.C. § 1132. Before the court is defendants' motion to dismiss for lack of standing pursuant to Fed. R. Civ. P. 12(b)(1) or, in the alternative, for failure to bring a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6).

BACKGROUND

The following facts are drawn from Mr. Simon's complaint ("Complaint") which, for purposes of this motion to dismiss, the court

accepts as true. Travel All Over the World v. Kingdom of Saudi Arabia, 73 F.3d 1423, 1429 (7th Cir. 1996). Quaker Plan is an ERISA employee benefit plan, sponsored by the Quaker Oats Company, to provide medical insurance coverage for Quaker employees and their families. In 1992, a former Quaker employee identified in the Complaint only as "W.L.", received medical treatment from the Humanistic Mental Health Foundation ("Humanistic"). After providing treatment to W.L., Humanistic submitted a bill for $5,400 to the Quaker Plan seeking reimbursement under the Plan. The claim was subsequently denied and neither W.L. nor Humanistic pursued the claim any further. Instead, the claim was assigned by Humanistic to Mr. Simon. Pursuant to the assignment, Mr. Simon now seeks the $5,400 allegedly due under the Plan as well as other statutory relief for the Plan administrator's alleged failure to provide requested Plan information and documents.

DISCUSSION

As a threshold matter, the Court notes that Mr. Simon first tried his hand at bringing these claims against the Quaker Plan, as well as 1600 other insurance carriers, in a California federal court prior to initiating this action here. See Simon v. Value Behavioral Health, Inc., No. 96-711 (C.D. Cal.). However, as the Quaker Plan itself acknowledges, Mr. Simon failed to serve the Quaker Plan in the California action and, therefore, the Quaker Plan was dismissed without prejudice. (Def. Mem. at 4).

Ironically, Mr. Simon's failure of process was to his advantage. As it turned out, the rest of the insurance carriers in that case were dismissed with prejudice for precisely the reason that the Quaker Plan seeks to do so here. See Simon v. Value Behavioral Health, Inc., 955 F. Supp. 93 (C.D. Cal. 1997). And the lower court's decision was soundly affirmed by the Ninth Circuit. See Simon v. Value Behavioral Health, Inc., __ F.3d ___, 2000 WL 282655 (9th Cir. March 17, 2000). But because the Quaker Plan was dismissed without prejudice, the principles of res judicata are not applicable and Mr. Simon gets

another shot in this venue armed with the lessons he learned in California. Nevertheless, Mr. Simon's luck ends here.

Where a defendant moves to dismiss pursuant to Rule 12(b)(1) for lack of standing or Rule 12(b)(6) for otherwise failing to state a claim, a complaint will be dismissed if it is clear that the plaintiff can prove not set of facts in support of his claim which would entitle him to relief. See Sanner v. Board of Trade of City of Chicago, 62 F.3d 918, 925 (7th Cir. 1995). Here, dismissal is appropriate because Mr. Simon cannot establish that this Court has the requisite subject matter jurisdiction over his claim.

In the Seventh Circuit, the contours of ERISA jurisdiction are determined by the statutory text and the terms of the particular ERISA plan at issue. See Kennedy v. Connecticut General Life Insurance Co., 924 F.2d 698, 700 (7th Cir. 1991). Thus, before a court can address an ERISA claim, the plaintiff must show first, that Congress expressly provided for such a cause of action, and second, that the claim also comports with the terms of the particular ERISA plan itself. Id. In this case, Mr. Simon fails to clear even the firs hurdle.

Under ERISA, "[t]he express grant of federal jurisdiction...is limited to suits brought by certain parties...as to whom Congress presumably determined that a right to enter federal courts was necessary to further the statute's purposes." Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1, 21 (1983). So far, Congress has seen fit to grant causes of action only to "participants" or "beneficiaries," as thos terms are defined by the statute. 29 U.S.C. § 1132(a); see also, Giardono v. Jones, 867 F.2d 409, 413 (7th Cir. 1989) ("We hold that the grant of subject matter jurisdiction in § 1132(e)(1) is exclusive. The courts are without the power to expand their jurisdiction under ERISA in order to imply a cause of action for non-enumerated parties."). The Court finds that Mr. Simon is neither a participant or a beneficiary under ERISA.

ERISA defines a "participant" to be

> any employee or former employee of an employer, or any member or former member of an employee organization, who

> is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

28 U.S.C. § 1002(7) (1999). But the Complaint is devoid of any allegations that Mr. Simon is a present or former employee of Quaker Oats Company, or a present or former member of an employee organization that would benefit under the Quaker Plan. As such, Mr. Simon is not a "participant" in the Quaker Plan as that term is understood by ERISA.

Furthermore, to be a "beneficiary" under ERISA, you must either be (1) "a person designated by a participant" as a beneficiary, or (2) "a person designated...by the terms" of this Plan "who is or may become entitled to a benefit thereunder." 29 U.S.C. § 1002(8). Mr. Simon clearly is not a beneficiary in the first sense as he concedes in the complaint that it was Humanistic, and not W.L. - the only conceivable Plan participant-, that assigned him the claim. (Complaint ¶ ¶ 7, 8).

Mr. Simon also does not qualify as a beneficiary in the second sense as he can not point to any terms in the Quaker Plan designating someone like Mr. Simon as being entitled to the plan benefits. The Quaker Plan does provide for assignments by participants to those who provided the participant with health care services: "At your option, you can assign benefits to doctors, hospitals, or other providers of services, if they have a policy of accepting assignments. This means the Plan will send the benefit payment check directly to the provider of services that has billed you... ." (Def. Mot., Ex. A at 1.22). However, the provision clearly does not refer to individuals such as Mr. Simon who was not assigned the benefits by a participant and who did not provide the participant with any medical services. Therefore, because Mr. Simon cannot state even a "colorable claim" as either a participant or a beneficiary under ERISA, the Complaint must be dismissed. See Kennedy, 924 F.2d at 700.

Appendix B

CONCLUSION

For the reasons stated above, defendants' motion to dismiss is granted, with prejudice.

Appendix C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

November 27, 2000

Before

Hon. Richard A. Posner, Circuit Judge
Hon. Frank H. Easterbrook, Circuit Judge
Hon. Michael S. Krane, Circuit Judge

STEPHEN SIMON,	}	Appeal from the United States
	}	District Court
Plaintiff-Appellant,	}	for the Northern District of
	}	Illinois, Eastern Division
	}	Division
No. 00-2342 v.	}	
	}	No. 99 C 5589
QUAKER OATS EMPLOYEE	}	
BENEFIT PLAN and DENNIS	}	Harry D. Leinenweber, Judge
CORY,	}	
Defendants-Appellees.	}	

Order

Plaintiff-Appellant filed a petition for rehearing and petition for rehearing en banc on November 15, 2000. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED. The motion for a stay of mandate is denied as superfluous.